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SUBJECT: FBI DIRECTOR MUELLER'S MEETING WITH ANTI-TERRORISM JUDGE

Classified By: Charge d'Affaires Bob Manzanares; reasons 1.4 (b) and (d)
)

1. (C) Summary. FBI Director Robert Mueller met May 9 with Juan del Olmo, the Spanish judge overseeing the investigation into the March 11, 2004 Madrid train bombings, to advocate improved information sharing on terrorism investigations. Director Mueller expressed understanding of the limits imposed on information sharing by the Spanish judicial system, but emphasized that the nature of the war on terrorism requires the rapid transmittal of investigative data to law enforcement authorities in many countries to head off future threats. Judge del Olmo agreed with the Director on the need for quick action against terrorists and said that he and other Spanish authorities acted swiftly to pass information that might be needed by the USG or other countries to avert new attacks. However, he also noted that where investigative data did not provide any indication of an imminent or future threat, it was his duty to maintain the primacy of Spain's legal rules of evidence, which strictly limit the distribution of information. This is why he maintained restrictions in the Monica Soto case, where a Spanish police investigation revealed no threat information related to a computer disk that included apparent diagrams of New York's Grand Central Station. Del Olmo stressed Spain's desire to be responsive to confront this common threat and assured the Director he would do all that he could to be helpful. The meeting with Director Mueller sensitized del Olmo to the USG's desire for additional investigative data, but it was unclear whether he understood precisely why we need such broad access to this information. We could reinforce our message by exposing del Olmo to USG law enforcement and intelligence counter-terrorism programs. Embassy Madrid is working to craft a possible visit by Judge del Olmo to the U.S. for counter-terrorism briefings. Readouts of Director Mueller's other meetings in Spain will be reported septel. End Summary.

//DIRECTOR URGES IMPROVED INFORMATION SHARING//

2. (C) Director Mueller thanked del Olmo for the information he had provided the USG regarding the investigation into the March 11 terrorist attacks. He said that as a former prosecutor he understood the challenges involved in carrying out a multi-nation terrorist investigation, citing his own work with Scottish officials in the Lockerbie bombing and with French officials in the 1989 UTA aircraft bombing case. The September 11 and March 11 attacks created a more complex world and a greater need for cross-border law enforcement cooperation. The Director said the FBI had changed its mission as a result of September 11, from incident investigation and prosecution to its new role in disrupting terrorists to prevent future attacks. He noted that the USG had adapted its legal structure to meet the terrorist threat, dropping barriers to the flow of information to grand juries, the intelligence community, and foreign allies. Director Mueller said he was seeking to understand the Spanish judicial system and its restrictions on information sharing. He stressed the critical nature of data such as telephone records and e-mail information for ongoing investigations and requested del Olmo's views on how the USG could facilitate improved information sharing.

//SPANISH LEGAL LIMITS ON INFORMATION SHARING//

3. (C) Del Olmo said that any discussion had to be placed in the context of the Spanish legal system, which immediately "judicialized" terrorism investigations. Judges charged with oversight of investigations sorted information into two distinct categories: A) evidence related to a crime that had already taken place, and B) evidence of planning for a future crime. Information in the first category had to be strictly controlled by a judge and, under the Spanish rules of evidence, restricted to only the judge, the prosecutor, and the police investigators. In the case of information to plans for future crimes, del Olmo said he saw no impediment to sharing such information as soon as it emerged.

4. (C) As an example, del Olmo noted that in the early stages of his investigation into the March 11 attacks, Spain had immediately shared with Italian authorities telephone numbers and other data that led to the arrest in Italy of extremists

affiliated with the March 11 bombers. He contrasted this with the USG's March 2004 letter rogatory requesting knowledge of the full scope of the investigation. Del Olmo said that at that point in the investigation a U.S. citizen was suspected of involvement (Washington state attorney Brandon Mayfield who was later cleared) and del Olmo authorized USG access to that narrow element of the investigation. According to del Olmo, there was tension between U.S. and Spanish officials because the rules of evidence restricted USG access to broader aspects of the investigation.

15. (C) The next point when del Olmo determined that a potential threat superseded the rules of evidence was in December 2004 when police found what appeared to be diagrams of New York's Grand Central Station on a computer diskette seized earlier in 2004 from a suspect connected to the bombers. In that case, said del Olmo, the prosecutor moved immediately to share the data with U.S. authorities. Judge del Olmo said that his investigation into the March 11 attacks had produced 50,000 pages of information related to the case. He had lifted secrecy restrictions on approximately 13,000 pages and would make those available upon request through a letter rogatory. Del Olmo said it was his understanding that there was an intense flow of investigative information being passed through intelligence channels and this reduced his concern that his implementation of secrecy restrictions to preserve legal evidence was somehow blocking USG access to important information.

//MONICA SOTO CASE//

16. (C) Director Mueller said the Soto case was a good example of why the USG sometimes felt frustrated by Spanish legal restrictions on information sharing. The fact that data had been provided by Spanish authorities allowed USG investigators to locate the worrisome diagrams and trace ownership of the disk back to Soto. It was the USG's understanding that the disk itself had been found in the possession of March 11 bombing suspect, so when Director Mueller briefed the information to President Bush it was understandable that the President wanted to know why Soto had not yet been interviewed by the FBI.

17. (C) Director Mueller said the FBI decided to work through the Spanish authorities out of respect for Spain's lead in the investigation, despite the fact that Soto was in the UK and could have been made available by British officials. The USG was subsequently frustrated by the inability to sit in on Soto's interview by the Spanish police or to obtain a detailed transcript of that interview. While both USG and Spanish authorities may have felt that Soto had little to offer and that there was no real threat involved, the USG considered the threat to be substantial until proven otherwise. The Director described the Soto case as an instance where judicial secrecy clashed with investigative needs and expressed his conviction that terrorism could only be defeated through closer international cooperation.

18. (C) Del Olmo agreed on the need for closer international cooperation, noting that Spain had worked closely with the USG in the wake of the September 11 attacks in part because of its own 35-year fight against ETA terrorism. He said Spain's difficult experience ensured that it would always respond swiftly to counter terrorist threats against any country. In the Soto case, del Olmo thanked the Director for the USG's assistance in tracking her down. He said he had felt reassured by the fact that he knew the USG had obtained the information on the disk via informal channels and assumed that the USG had determined that there was no indication of an immediate threat to the U.S. He also noted Soto's complete cooperation with Spanish authorities when they interviewed her and said that the lack of clear threat information convinced him that her information was more valuable as evidence than as information to be passed to the USG. Del Olmo said he had briefed the Embassy's Consular Section (which along with Legat works closely with del Olmo) on this determination and explained his thinking. He assumed full responsibility for his decision and assured Director Mueller that the information had not been held back out of malicious intent, but simply to comply with Spanish rules of evidence.

19. (C) More broadly, del Olmo underlined the Spanish government's commitment to work with the USG to combat terrorism and to provide as much information as possible. He said that in the case of the March 11 investigation, much of the information concerned common criminal activity that he did not believe would be of particular use to USG authorities. He described the March 11 bombing case as a "strange mix" of religious fundamentalism and narcotics smuggling activity, with a limited international component and even less information directly related to the U.S.

110. (C) Director Mueller thanked del Olmo for his explanation of the events surrounding the Soto matter and complimented him for his work on the March 11 investigation. He observed

that Spain had gained much experience in its fight ETA and had developed powerful judicial mechanisms to confront the threat. However, the threat posed by Islamic extremism was much different and the key to success in this war was greater international cooperation against the terrorists. Director Mueller noted that investigators in one country could not possibly be sure whether information in their possession might be useful in another country unless they shared that data. He said it was important to develop new mechanisms for information sharing, not just with the USG, but with other EU countries and even further afield. Director Mueller said he hoped del Olmo would have an opportunity to visit the U.S. to further discuss these important issues.

//COMMENT//

11. (C) Director Mueller's meeting with Judge del Olmo was a very helpful boost to USG efforts convey to the Spanish government the importance we place on the smooth, consistent flow of terrorism-related information. Still, it was clear by the end of the conversation that del Olmo continues to find it difficult to understand why the USG requests such broad access to information that -- in the Spanish legal context -- is normally barred to those not directly involved in the trial process. It is important that we continue working with him to explain why even seemingly trivial information might be useful to USG terrorism analysts. We believe it would be useful to expose del Olmo to U.S. counter-terrorism investigative techniques, perhaps through a visit to relevant USG agencies. Members of the Embassy Counter-Terrorism Working Group are working together to craft an agenda for a possible visit to the U.S. by del Olmo. Judge del Olmo's lead in the March 11 investigation suggests he may be involved in future terrorism investigations, making him an important information resource over the long term and therefore a contact well worth cultivating.

MANZANARES